

IN THE MATTER OF the *Ontario Energy Board Act, 1998*, S.O. 1998, c. 15, (Schedule B)

AND IN THE MATTER OF an application by Toronto Hydro-Electric System Limited for an order approving just and reasonable rates and other charges for electricity distribution to be effective May 1, 2015 and for each following year effective January 1 through December 31, 2019.

EVIDENCE OF ROGERS COMMUNICATIONS PARTNERSHIP, COGECO CABLE INC. ON BEHALF OF ITSELF AND ITS AFFILIATES, INCLUDING COGECO CABLE CANADA LP AND COGECO DATA SERVICES INC., ALLSTREAM INC. AND TELUS COMMUNICATIONS COMPANY AND ITS AFFILIATES (TIMOTHY BROWN)

March 26, 2015

A. INTRODUCTION

1. My name is Timothy Brown. I hold the title of Senior Manager Municipal and Industry Relations at Cogeco Cable Canada. I have over 17 years' experience in the telecommunications and cable industries, including seven years' practical experience in fibre network planning, engineering, permitting and construction, allowing me to acquire a comprehensive understanding of industry-specific operational, technological and implementation issues. A copy of my CV is attached to this report as Appendix A.
2. I have been asked by Rogers Communications Partnership ("Rogers"), Cogeco Cable Inc. on behalf of itself and its affiliates, including Cogeco Cable Canada LP and Cogeco Data Services Inc., Allstream Inc. ("Allstream") and TELUS Communications Company and its affiliates ("TELUS" and, collectively, the "Carriers") to provide my views on certain operational issues and claims made by Toronto Hydro-Electric System ("THESL") in respect of its application to increase its annual pole access charge for wireline attachments from the current approved rate of \$22.35 per pole to \$80.38 per pole.
3. I have read the evidence of THESL supporting the request for the pole rate increase, as well as the evidence of Suzanne Blackwell and Roger Ware, who, on behalf of the Carriers, have provided evidence on the appropriate costing inputs and methodology for the pole attachment rate.
4. This evidence addresses the following issues:
 - (a) The appropriate number of attachers on THESL poles used by the Carriers;
 - (b) The substantial differences between pole tenancy and pole ownership;
 - (c) The pole replacement process and the impact of third party wireline attachers on that process;

- (d) Pole attachment audits and allocation of associated costs; and
- (e) An appropriate wireline pole attachment rate for THESL.

B. Number of Attachers on THESL Poles Used by the Carriers

5. Historically, the City of Toronto has been served by two primary communications service providers – Bell Canada, providing telecom services, and Rogers providing cable TV services. Each company built parallel networks to offer their distinct services to their customers. Wherever possible, the companies used the existing support structures (i.e., poles) owned by THESL or Bell. This means that wherever Bell has made attachments to a THESL pole, it is more than likely that Rogers has also placed its attachments on the same pole.
6. Based on my review of the Rogers network and my knowledge and understanding of the Bell network, I am unable to understand how there can only be an average of 1.6 wireline attachers per pole. In almost every case of poles with attachments, there are at least two attachers, being Bell and Rogers. In addition, THESL, through its sister company, Toronto Hydro Telecom, built up an extensive network using the poles of THESL. That network has since been sold to Cogeco Data Services but remains as a significant presence on THESL poles.
7. In addition, I have encountered attachments from other companies and entities. For example, we have seen considerable construction activity from TELUS and Allstream. As well, the Toronto Transit Commission has deployed an extensive communications network to support its operations.
8. Based on these activities, I believe that a more realistic figure for the average number of wireline attachers would be 2.5 and there are likely another 0.5 - 1 other types of third party attachers on the poles used by the Carriers. In my view, the figure of 1.6 as proposed by THESL severely understates the reality of the networks and other attachments that are supported by THESL poles.

C. Differences between Pole Tenancy and Ownership

9. I understand that THESL has taken the position in its evidence that because THESL and the third party wireline attachers are all occupants of the pole, they should share the common costs of the pole equally among them. The problem with this approach is that it ignores the inherent and contractual advantages that are conferred upon THESL as the pole owner and the disadvantages faced by the wireline attachers as mere tenants of the pole.

10. This disparity between the pole owner and the pole attacher is most prevalent in the standard industry support structure agreements pole attachers are required to enter with the hydro companies for the use and occupancy of their poles, which afford the pole owner a variety of financial and operational benefits. The following is a partial list of the benefits accrued to THESL and the disadvantages faced by the Carriers.
 - (a) THESL can assess penalties for attachment of ours where no permit record can be found; and can demand posting of \$100K in security.
 - (b) THESL will always have space on its poles to accommodate its facilities. However, space for wireline communications attachments is limited and can become congested. Further, THESL can refuse requests to attach for any number of reasons.
 - (c) THESL can reject our request to attach even after a permit has been approved and make-ready to THESL plant has been completed and paid by the attacher.
 - (d) THESL can install its attachment within the communications space on the pole thereby limiting the space available for third party communications attachers.
 - (e) Where an attacher has more than one attachment (i.e., strand) on a pole, THESL can require it to consolidate its attachments into a single strand or

give up one of the strands to THESL or a third party seeking access to the pole. This can be hugely expensive and disruptive, particularly where a carrier has acquired the assets of another.

- (f) All potential attachers must go through a permitting process which can be costly and time consuming. Plus, all work must be coordinated with THESL's schedule and availability of its onsite inspectors.
- (g) Because THESL does not always have complete records of the equipment it has installed on its pole, a carrier seeking to attach will have to undertake or pay for a structural analysis of the pole from scratch without the benefit of a prior analysis.
- (h) The make-ready work that a carrier is required to undertake must make the pole completely sound and to spec, even if the pole was not up to standard prior to the attachments being added. This means that the attacher is, in essence, paying for prior deficiencies in THESL's pole.
- (i) If it is determined that the make-ready work requires the replacement of the existing pole with a new pole, the carrier is responsible for the entire cost of the pole, which will continue to be owned by THESL.

D. The Pole Replacement Process

11. As I understand it, THESL has asserted in its evidence that, when THESL is required to replace those poles to which third party wireline communications attachments are affixed, it must engage two separate crews to complete the entire process. THESL claims that the need to deploy a second crew is directly attributable to the presence of the wireline communications attachments on the poles and, if not for such attachments, the replacement could be conducted in a single visit by a single crew. On this basis, I understand that THESL has determined that the costs of the second crew should be absorbed by the wireline communications attachers.

12. With respect, I believe that THESL has mischaracterized the pole replacement process by suggesting that the presence of third party wireline attachments necessitates additional crew visits.
13. In my experience, save for a handful of instances, the replacement of a pole always requires the deployment of at least two different crews at separate times, regardless of whether the pole has wireline attachments or not.
14. The process can be described in the steps set out below. The pole replacement process normally involves an entire line of poles.
 - (a) In the first step, a crew will be used to auger or drill the holes for the new replacement poles. Then the new poles will be installed and secured. This step may not occur immediately after the drilling of the holes and may not necessarily employ the same crew.
 - (b) In the next step, "linemen" will carefully move the power cables and equipment from the old poles onto the new poles. These linemen are specialized workers who have been qualified to work within the power space. By their very qualifications and nature of the work they perform, they will normally be a completely different crew than the one used to drill the holes or place the new poles.
 - (c) In the final step, THESL will send in another crew to remove the old poles and remediate the land that was affected (i.e., fill in the holes).
 - (d) If the poles have wireline attachments, the attachers are notified and advised as to when they must relocate their attachments to the new poles. The transfer of the wireline attachments must be done after the new poles are installed and after the power cable and equipment have been moved but before the old poles are removed.
15. As can be seen from the above description, pole replacement by its nature and complexity requires different visits by different THESL crews, regardless of

whether there are third party wireline communications attachments on the existing poles.

E. Typical Approach to Pole Attachment Audits and Associated Costs

16. I understand that, in its evidence, THESL has asserted that it should be entitled to recover part of the costs of its Pole Inspection Program (PIP) as a direct cost that is incorporated into the pole rental rate.
17. In my view, this assertion that inspection or audit costs should be recovered through the pole rental rate creates an over recovery of such costs because they are already covered in the standard support structure agreements used in the industry. These agreements provide that, in order to ensure the accuracy and completeness of existing permits issued for attachments, the parties shall jointly participate in a field inspection at intervals mutually agreed upon, but generally, once every five years. The agreements further provide that every effort will be made to include all pole users in the field inspection and that participating parties will come to a negotiated agreement regarding the allocation of costs of such inspections.
18. In my experience, the normal procedure is to divide the costs of the audit among all the parties on the pole, including the hydro company. As each party with equipment on the poles is billed separately for its share of the inspection costs, I do not understand why these costs need to be recovered through the pole rental rate.

F. THESL Wireline Pole Attachment Rate

19. I have reviewed the evidence of THESL as well as the expert evidence of Suzanne Blackwell and Roger Ware. I am also aware of the costing inputs and wireline pole attachment rates that have been approved by other regulators in Canada. In my view, based on this information, an appropriate THESL wireline pole attachment rate is \$12.67. The inputs to and calculation of this rate are set out in the Table below.

Proposed Wireline Pole Attachment Rate (2.5 Wireline Attachers)

<i>Price Component - Per Pole</i>	<i>\$</i>	<i>Explanation</i>
DIRECT COSTS		
A. Administration Costs	\$1.54	Blackwell estimate adjusted to remove allocation of shared services costs and for 3.0 third party overhead attachers (2.5 wireline plus 0.5 other overhead attachers)
B. Loss in Productivity	\$0.33	Blackwell estimate adjusted for 2.5 wireline attachers
C. Total Direct Costs	\$1.87	A + B
INDIRECT COSTS		
D. Net Embedded Cost per pole	\$967.30	EDA estimate for THESL, adjusted to remove power-specific fixtures
E. Depreciation Expense	\$21.50	D * 1/45 (average life of poles)
F. Pole Maintenance Expense	\$4.77	Blackwell estimate
G. Capital Carrying Cost	\$59.88	D * weighted average cost of capital of 6.19%
H. Total Indirect Costs per pole	\$86.14	E + F + G
I. Allocation Factor	12.54%	
J. Indirect Costs Allocated	\$10.80	H * I
Annual Pole Rental Charge	\$12.67	C + J

APPENDIX A

TIMOTHY W. BROWN

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Stoney Creek, ON L8E 0E4

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EXECUTIVE SUMMARY

- Over seventeen years' experience in the telecommunications and cable industries as a multi-disciplined leader, proven negotiator, trusted facilitator and "resident expert" in land and structure access agreements and issues.
- Excellent written skills in drafting land and structure access agreements with a strong understanding of real estate, telecommunication regulatory and contract law.
- Seven years' practical experience in fibre network planning, engineering, permitting and construction provides comprehensive understanding of industry-specific operational, technological and implementation issues.
- Close personal relationships with key representatives at Ontario municipalities, hydro utilities and road authorities, as well as within the telecom industry.
- Fifteen years commercial real estate experience and business acumen.
- Effective and persuasive interpersonal skills in negotiations and in managing employees.

PROFESSIONAL EXPERIENCE

COGECO CABLE CANADA LP

Senior Manager, Municipal and Industry Relations

2008 – Present

*Developed a strategy, adopts a win-win negotiation style and builds key relationships in order to finalize land, building and structure ("property") access agreements with municipalities, hydro utilities, road authorities, landlords, property managers, and communication, gas and rail companies ("**Approving Authorities**"), required in order to build Cogeco's network while minimizing financial, regulatory and risk exposure. Drafts and negotiates agreements including:*

- *Municipal Access Agreements ("**MAA**")*
- *Support Structure Agreements ("**SSA**")*
- *IRU Fibre Exchange and Maintenance Agreements ("**IRU**")*
- *Highway Usage Agreements*
- *Easements*
- *Joint Trench Agreements*
- *Rail Crossing Agreements*
- *Commercial Building Access Agreements and HUB*
- *Commercial Purchase and Sale*
- *HUB and Tower Collocation*
- Established and grew a Centralized Permit and Design Team introducing new strategies and processes to obtain timely consent of permits from Approving Authorities. Enabled Cogeco for the first time to exceed KPIs on two major initiatives.
- Developed and implemented province wide a Drawing Design Standard to standardize construction drawing design submissions prepared by Professional Engineering Firms.
- Key contributor to the development of the CRTC model MAA.
- Influenced CSA and ESA in setting acceptable and practical industry standards.

ROGERS COMMUNICATIONS INC.

Manager, Municipal and Industry Relations, Regulatory

2003 - 2008

Diplomatically build and manage relationships with key individuals of government to advocate Rogers' position in CRTC, OEB and other hearings. Develop trusted relationships with industry peers in working together to address common issues. Negotiate with Approving Authorities and rights-of-way owners to

obtain rights for use of lands and structures and to ensure issuance of permits to facilitate uninterrupted building of the network. Draft and maintain over 800 agreements, renewed and terminated them with a "hard line" approach to cost reduction and avoidance.

- As lead negotiator of a consortium (Bell, Telus, MTS Allstream, Rogers), negotiated and finalized MAAs throughout Ontario. Helped municipalities articulate their permitting processes and establish fees reflective of the communication industry's activities.
- Authored Rogers' model SSA and IRU Agreements and negotiated a number of reciprocal agreements with industry partners. Drafted and implemented an internal application approval process for both agreements.
- Liaised externally as Chair of Toronto Public Utilities Coordinating Committee, DMOG and Finance & Admin. Sub-Committee of the TPUCC, proposing solutions to resolve contentious issues and reduce conflict. Represented Rogers' interests at Building, Industry and Land Development (BILD) and presented to municipal councils and industry forums. Built and maintained positive relationships with government officials and senior staff of hydro utilities.
- Liaise internally with cross functional teams in Planning and Engineering, Technical Operations, Permits and National Network Implementation. Established and host regular information sessions to prioritize issues, promote appreciation of and conformance to regulatory decisions and operationalize terms and conditions of negotiated agreements.

AT&T CANADA CORP. / METRONET COMMUNICATIONS INC. (various positions) 1997 – 2003
Senior Manager, Municipal Relations and Telecom Property Services, Engineering 2000 – 2003

Directed a team of four managers in negotiating agreements with all levels of governments, hydro utilities, landlords, property managers, communication, gas and rail companies, to secure contractual rights for access to public and private lands, buildings and structures. This permitted AT&T Canada to construct a national fibre network facilitating the delivery of telecommunications services direct to customers premises.

- Personally negotiated national building access contracts with major landlords: Oxford; O&Y Properties; GWL; Sunlife; Manulife; and others; at rates 30% to 50% under industry averages.
- Provided cross training to group so that each manager became well versed in all agreement types.
- Developed a strategy to manage 850 contracts, (MAAs, SSAs, Municipal Energy Agreements (MEA) and Building Access Licenses (POP and HUB Agreements), to renew, amend or terminate them as required to ensure uninterrupted rights for AT&T's ongoing operations.
- Led a working group in drafting an industry position paper related to rights and costs for access to multi dwelling units. Presented to CIPPREC and BOMA. Removed prejudiced opinions. Provided a clearer understanding of the issues and opened the door for more open negotiations.
- Interceded on issues with building managers, enforcing terms and conditions of agreements, reducing technicians down time thus allowing them to meet deadlines for customer installations.

Senior Manager National Network Implementation Support, Engineering – National 2000

Simultaneously fulfilled three roles as: Project Manager Escalated Builds; Project Manager Construction Database; Senior Manager National Network Implementation (NNI Support).

- Investigated, reported and corrected root causes of escalations reducing escalated orders by 90%, and prevented loss of expended capital by eliminating customer cancellations.
- Created a construction data base to track all aspects of projects from capital approval through to completion, including expenditures, goods delivery and permit and project status.
- Analyzed, redefined and restructured responsibilities, functions and processes for a group of seven so they could support all departments of NNI. Increased productivity and improved moral. My proposal for merging duplicated roles and unifying conflicting standards in the groups we supported was adopted by NNI.

Manager National Engineering and Construction – Eastern Ontario 1999 – 2000

Effectively managed a budget of \$21M while building and coaching a team to jointly meet and exceed revenue targets and consistently deliver projects ahead of schedule and under budget.

- Reorganized existing resources and infused a high level of energy into the team giving each member responsibility and accountability for their projects. Jointly scheduled and delivered fibre to over fifty-six Federal Government sites, on time and under budget, despite many customer challenges and having to manage and prioritize a four-fold increase in workload.
- Resolved inherited invoicing issues saving AT&T \$2.8M while re-establishing good working relationships with sub-contractors and suppliers.
- Reviewed and revised existing processes for permitting, engineering and financial approvals, reducing standard deliver from sixty-five days to forty days. This allowed us to increase sales by accepting orders previously rejected because of aggressive customer requested delivery dates.
- Drafted and negotiated service agreements with engineering and construction contractors. Enforced company standards on contractors, improving quality of work and accuracy of drawing submissions, thereby reducing complaints, callbacks and errors.

Manager Building Access and Facilities - Ottawa

1997 - 1999

Improved deliverables and quality of construction and maintenance work related to both facility and network elements, while reducing costs. Applied real estate and property management knowledge in a manner that allowed MetroNet to accelerate its Ottawa business plan by over a year.

- Negotiated building access agreements (leases) for points of presence (POPs) in commercial buildings, finalizing 200% of the annual quota in just the first quarter.
- Property managed MetroNet facilities, including office, head-end, POPs and warehouse, responding to all maintenance, construction, leasehold, people and legal issues.
- Authored a "Safety and Security Plan".

Manager OSP Engineering and Network Development - Ottawa

1997 - 1999

Motivated OSP Engineering and Fibre Facilities departments to effectively co-ordinate, deliver and track fibre splicing and fibre build projects.

- Influenced three cross-functional departments to resolve legacy fibre issues which enhanced the integrity and optimized the use of the fibre network, allowing completion of stalled customer orders.
- Developed relationships with subcontractors based on integrity, accountability and operational excellence, which resulted in improved delivery times, quality of work and reduced costs.

REGIONAL REALTY

1992 - 1997

Associate Broker - Commercial Real Estate, Property Management

- Prepared, negotiated and finalized leases and sales for \$37M of properties for national and local clients: O&Y Properties; National Trust Co. Ltd.; Westendie Flemming; PenEquity Trust.

KANATA REALTY / BRANUM REALTY CORP. / MORGAN PROPERTY MANAGEMENT

1984 – 1992

Broker/Property Manager/Co-Owner - Commercial Real Estate and Property Management

- Managed a commercial brokerage firm specializing in land development, growing it to become the fifth largest in Ottawa Carleton.
- Built the property management division, personally managing over one million sq. ft. of office space.
- Negotiated service level agreements with contractors and suppliers in support of all activities related to ongoing operation and maintenance of retail malls and office buildings.

ASSOCIATIONS

Chair Toronto Public Utilities Coordinating Committee (TPUCC)

2004 - 2005

Chair of Digital Map Owners Group, Toronto (DMOG)

2004 - 2005

Treasurer and Chair TPUCC Finance and Administration Subcommittee

2002 - 2005

AT&T Representative Toronto Public Utilities Committee

2001 - 2002

BOMA Associate Member - Ottawa and Toronto	1998 - 2002
Telecom Steering Committee – BOMA Ottawa	1999 - 2000
Kanata Chamber of Commerce - Founding Director	1990 - 1992
Quality Improvement Team – AT&T Non Standard Requests	2000

CERTIFICATIONS

Ontario Real Estate Brokers Certification	1990
Ontario Real Estate Association Certification Program	1981

CONTINUING EDUCATION

Management and Leadership Courses:

“Changing as Fast as I Can”; Fantastic Managers Practices; “I’m Leading as Fast as I Can”; Performance Excellence for People Managers, Baldrige Program.

Rogers Certificate Program:

7 Habits of Highly Effective People; Communicating Effectively; Dealing with Difficult Conversations and People; Business Writing; Interviewing for Results; Win/Win Negotiations; Coaching for High Performance; Objective Setting, Planning and Delegation; Managing at Rogers.